

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Cedillo Analyst: Darrine Distefano Bill Number: AB 63
Related Bills: See Legislative History Telephone: 845-6458 Introduced Date: 12-06-2000
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: FTB Disclosure of Tax Return Information to City Tax Officials if Written Agreement

SUMMARY

This bill would allow the Franchise Tax Board (FTB) to disclose a taxpayer's name, address, social security or taxpayer identification number, and business activity code to tax officials of a city under specific limited circumstances.

EFFECTIVE DATE

This bill would become effective and operative on January 1, 2002, and by its express terms would apply until December 31, 2008, when it would be repealed.

LEGISLATIVE HISTORY

AB 1992 (99/00, died on the Assembly Floor), AB 385 (99/00, failed passage in Senate Revenue and Taxation) and AB 1063 (97/98, died in Senate Revenue and Taxation) would have permitted FTB to disclose income tax information to tax officials of charter cities.

PROGRAM HISTORY

Local governments may seek the help of FTB to locate taxpayers who fail to obtain and pay for a local business license. That is because an individual taxpayer who files a California income tax return that reports income from a trade or business may have had a local business license obligation.

California tax return information is confidential. In order to obtain confidential tax information about any taxpayer, a local government must send an affidavit to both the FTB and the taxpayer. The affidavit must state the purpose of the request and demonstrate that the information will be used only for authorized purposes. However, a local government may not know the identity of a taxpayer operating an unlicensed business. Consequently, the city does not have the information necessary to provide such an affidavit. Absent this affidavit, information cannot be provided.

In 1995, the City of Los Angeles, as part of a business tax amnesty program, requested that FTB furnish information on unlicensed businesses that were operating in that city and filing state tax returns but that had failed to pay appropriate business license taxes to the city. Since state law prohibits tax information reported to FTB by taxpayers from being disclosed, FTB was unable to provide the requested information directly to the City of Los Angeles. However, FTB was able to receive information from the city sufficient to identify businesses paying state but not city tax and notify those businesses of the city's amnesty program. FTB was able to assist the city but without disclosing confidential taxpayer information to the city.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ X PENDING

Department Director

Date

Gerald H. Goldberg

2/14/01

SPECIFIC FINDINGS

Current federal law provides that returns and tax information are confidential and may not be disclosed to federal or state agencies or employees except for authorized purposes. Agencies allowed access to federal return information include certain federal and state agencies, such as FTB. A federal return is defined as any tax return, information return, declaration of estimated tax, or claim for refund under the Internal Revenue Code.

Current state law prohibits the disclosure of any taxpayer information except as specifically authorized by statute. Any FTB employee or member responsible for release of state or federal tax information is subject to criminal prosecution. Improper disclosure of state tax information is a misdemeanor and improper disclosure of federal tax information is a felony.

California law, in limited instances, permits FTB to release individual tax return information under certain limited circumstances to the following entities: legislative committees, Office of the Attorney General, Office of the California Parent Locator Service, directors of Social Services and Health Services, and California tax officials, such as the Board of Equalization (BOE) or the Employment Development Department (EDD), the Controller, and the Department of Motor Vehicles (DMV). Agencies must have a specific reason for requesting the information, including investigating items of income disclosed on any return or report, verifying eligibility for public assistance, locating absent parents to collect child support, or locating abducted children. For some agencies, only limited information may be released, such as the taxpayer's social security number and address.

California law also permits FTB to release confidential tax information according to tax return sharing agreements with the Internal Revenue Service (IRS), the Multistate Tax Commission (MTC), and the taxing authorities of other states and Mexico. The exchange must relate to the enforcement of tax laws and the information must not be made public.

Current state law provides that FTB may respond to requests from local taxing agencies to furnish information on a specific taxpayer. The request must be in the form of an affidavit signed under penalty of perjury stating that the purpose of the request relates to an investigation of the tax specified in the request and that the information will be used in the ordinary performance of the applicant's duties.

This bill would allow FTB to disclose a taxpayer's name, address, social security or taxpayer identification number, and business activity code to tax officials of a city. Use of this information would be limited to employees of the taxing authority of a city.

Since **this bill** references the Revenue and Taxation section that describes how information can be exchanged between FTB and other agencies, information would have to be provided under a reciprocal agreement between FTB and the cities. Information under this agreement could be used only for tax administration purposes as required by existing law. Any unauthorized disclosure or willful browsing of the information received by the city pursuant to this bill would be considered a misdemeanor as stated in current law.

This bill also would allow FTB to recover its costs of providing tax information to tax officials of any city. Before FTB would furnish any information under this bill, the following would have to occur:

- an agreement would have to be executed with the city providing the city would pay all first year costs necessary for FTB to furnish the city the proper information;
- an agreement would have to be executed that would provide that the city would reimburse FTB for the annual costs thereafter; and
- FTB will receive an amount equal to the first year costs before any information is furnished.

This bill also requires the California Research Bureau to report to the Legislature the impact and effects of this act by December 31, 2005.

Implementation Considerations

This bill would allow FTB to share certain confidential tax information, including business activity codes received from IRS returns, with cities. A large number of the business activity codes used by FTB are obtained from IRS data shared with FTB. Federal law and IRS policy require that information obtained from the IRS by FTB not be disclosed or used in any unauthorized manner. Currently, FTB is authorized to use information obtained from the IRS to resolve state income tax issues. If FTB uses information received from the IRS that is then to be reported to a city under this bill, FTB would exceed its authority to use IRS information. Consequently, reporting this information to a contracting city would likely be interpreted by IRS as an unauthorized use of IRS information, and thus would violate both federal law and the terms of FTB's agreement with IRS.

Current FTB systems do not have the ability to provide the information necessary to comply with this bill without using federal data. To comply with the bill without violating the current FTB-IRS information sharing agreement, FTB would have to create a new database and processes to capture the information. FTB would have no other use for the database and processes beyond reporting the information to contracting cities.

FTB currently performs periodic audits on other state agencies that receive confidential tax information to ensure compliance with the practices and procedures for the protection and proper disposal of confidential tax information. FTB would have to expand these audits to the contracting cities that receive confidential taxpayer information.

FISCAL IMPACT

Departmental Costs

Since FTB's current programs do not capture the necessary data to comply with this bill, and FTB cannot use the federal information currently received for the reasons stated under *Implementation Considerations*, FTB would need to develop new processes. To comply with this bill, FTB would revise the Schedule CA (California Adjustment Schedule) and the instructions to include a business activity code. FTB staff would scan the Schedule CA and key the business activity code into a database where the information would be retained for future reporting to contracting cities.

FTB would incur significant costs for developing the requisite new processes, for the additional employee hours required to develop and maintain the new database, and for purchasing equipment. In the year of implementation, it is estimated that FTB costs would be approximately **\$1,607,965** to cover an expected **12.1 personnel years (PYs)**. For the year following implementation, costs would be **\$303,383** to cover an expected **9.6 PYs**.

In addition, FTB would need another **2 PYs** at an annual cost of **\$150,000** for periodic audits of the cities to ensure that recipients of the tax information are complying with the statutory confidentiality requirements.

Tax Revenue Estimate

This bill would have no identifiable revenue effect on state income tax receipts.

OTHER STATES

No statutes were found that expressly permit a state to share confidential taxpayer information with its local governments.

BOARD POSITION

Pending.